

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BUENA PARK SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015010467

ORDER DENYING MOTION TO
CONSOLIDATE

On January 13, 2015, Buena Park School District filed a request for due process naming Student (District's case.) A prehearing conference was held on February 9, 2015. On Student's motion, the PHC was continued to March 9, 2014 and the due process hearing was continued to March 16, 17, 18, and 19, 2015.

Student filed a request for due process hearing on March 3, 2015, naming District; designated OAH case number 2015030183 (Student's case). A due process hearing was set to begin in Student's case on April 28, 2015. On March 6, 2015, Student filed a motion to consolidate the two cases. By its nature, Student's request for consolidation is also a request for continuance. Because the motion to consolidate was filed on Friday March 6, 2015, District was unable to timely file written opposition before the PHC in District's case. The motion to consolidate was argued at the PHC in District's case on March 8, 2015.

District objected to consolidation on the grounds District's case and Student's case do not involve the same issues and judicial economy would not be served by consolidation. District contends the dates set in District's case were agreed upon at the February 9, 2015 PHC and allow an appropriate amount of time to complete a hearing on the two issues presented in District's case. District further objected to a continuance to the dates set in Student's case, on the grounds counsel was unavailable and could not confirm the availability of the witnesses currently scheduled to testify in District's case on March 16, 17, 18, and 19, 2015.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

The two issues presented in District's case concern assessment plans dated March 6, 2014 and May 27, 2014 and assessments reported on October 11, 2013 and February 26,

2014. District alleges the requested assessments are necessary in order to consider Parent's request for a significant change in placement and a determination of whether District's assessments were appropriate is due to Parents' request for independent educational evaluations at public expense. Student's case alleges eight issues; in short, none of his IEP's since October 2013 offered Student a FAPE and District committed a number of procedural violations that impeded Parent's the right to participate in decision making process and denied Student a FAPE.

Student's motion does not demonstrate common issues of law and fact, and consolidation would not result in judicial economy. The law applicable to the District filed case having to do with assessments is different than the law applicable to Student's FAPE issues. Moreover, while resolution of the assessment issues may simplify the issues in Student's case, there is no danger of inconsistent results. Student's case also involves far more factual issues than District's case. Student, assuming the motion to consolidate would be granted, disclosed 47 witnesses and listed 28 exhibits in his PHC statement filed on March 5, 2015. On March 6, 2015, Student filed an amended PHC statement as to District's case only, in which Student listed 11 witnesses and 10 exhibits. In this case, even though there would be some overlap in witnesses, consolidation would greatly increase the number of witnesses and the amount of time needed for their testimony. Lastly, the parties agreed to the number of days and the dates for District's case at the PHC on February 9, 2015, and District objects to further continuance. Accordingly, consolidation does not further the interest of judicial economy or save time and Student's motion to consolidate is denied.

IT IS SO ORDERED.

DATE: March 09, 2015

/s/

MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings